STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 10, 2008
v	No. 275300 Bay Circuit Court
ARTHUR JAMES BRIDGES, Defendant-Appellant.	LC No. 06-010509-FH

Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant appeals following his jury trial conviction of one count of conspiracy to deliver cocaine, MCL 333.7401(2)(a)(*iv*), and one count of possession with intent to deliver cocaine, MCL 750.157a. We affirm.

Defendant first argues on appeal that his conviction should be reversed because he was never properly arraigned on the information. Specifically, defendant contends that the circuit court's alternative arraignment procedure is facially unconstitutional and, alternatively, to the extent that the procedure is constitutional, the court failed to follow its own procedure and defendant's constitutional rights were thereby violated. We disagree. Defendant first raised this issue in a post-trial motion and, thus, the issue is not preserved. *People v Willis*, 1 Mich App 428, 430-431; 136 NW2d 723 (1965). Because defendant did not preserve the issue, he must show plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The right to arraignment is a procedural right guaranteed by the United States and Michigan Constitutions, and by statute. *People v Phillips*, 383 Mich 464, 470; 175 NW2d 740 (1970); US Const, Ams VI; Const 1963, art 1, § 20; MCL 767.45. The purpose of arraignment is to inform a defendant of the nature and cause of the charges pending against him. *People v Thomason*, 173 Mich App 812, 815; 434 NW2d 456 (1988). Arraignment also informs a defendant of his right to counsel, functions to fix bail and a date for the preliminary examination, and allows defendant to enter a plea. *Id*. The Michigan Supreme Court has held that if a defendant is not arraigned, then his conviction must be set aside. *Grigg v People*, 31 Mich 471, 472-473 (1875). However, failure to arraign is not grounds for automatic reversal where a defendant and all the parties go to trial "as if all formalities had been complied with." *People v Weeks*, 165 Mich 362, 365; 130 NW 697 (1911). In other words, this Court will not reverse a

conviction if it appears from the record that defendant was apprised of the charges against him, appeared prepared in court, and went to trial on the merits. *Id.*

The relevant portion of the court's alternative arraignment procedure provides:

> On or before the date scheduled in District Court at the time of bindover (formerly the date and time set for the Arraignment), the Prosecuting Attorney shall file the original Information with the Circuit Court Clerk and serve a copy upon the attorney for the defendant. . . . Defense counsel shall provide the defendant with a copy of the Information. Prior to plea or trial, the Court shall confirm on the record that the defendant received a copy of the Information. [Bay City Administrative Order No. 2006-01.]

In this case, defendant was arraigned in district court on the exact same charges. At that time, bail was fixed, the next court date was made, and defendant was informed of his right to counsel and possible punishments. Nearly a month before trial, defense counsel provided defendant with a copy of the felony information, although defendant contests this fact. Although the circuit court failed to confirm whether defendant had received a copy of the information, defendant proceeded to trial without objection and was prepared to argue the case on the merits. Given these facts, we think the purposes of arraignment were met. Defendant was fully aware of the charges from the outset and planned to try the case, as his failure to object indicates. Moreover, although defendant is entitled to arraignment, he is not allowed to remain silent about any problems with that process and then raise the issue only after a verdict has been rendered against him. See *Weeks*, *supra* at 367. The court's error did not affect defendant's substantial rights.

Defendant argues that the Court's failure to comply with its own procedure denied him the opportunity to enter a plea and engage in pretrial negotiations. However, defendant does not have a guaranteed constitutional right to a plea or to plea bargaining negotiations. See *People v Grove*, 455 Mich 439, 469-471; 566 NW2d 547 (1997). Although defendant may not have had the opportunity to make a plea, he was not denied any of his guaranteed constitutional rights. All that is required is that defendant be given a fair trial. *Id*. at 471. Nothing on the record indicates that the trial's outcome would have been different had defendant entered a plea. In fact, testimony at the *Ginther*[1] hearing established that defendant intended to maintain his innocence and go to trial.

Because we conclude that the court's error did not affect defendant's substantial rights, we need not reach the issue regarding the constitutionality of the arraignment procedure. In any event, we conclude that defendant has failed to substantiate his constitutional challenge.

Defendant's next argument is that the verdict was against the great weight of the evidence. Again, we disagree. Generally, conflicting testimony and witness credibility do not provide sufficient reasons for granting a new trial. *People v Lemmon*, 456 Mich 625, 642-643;

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

576 NW2d 129 (1998). However, courts have carved a very narrow exception to this rule, which in exceptional circumstances allows courts to "take testimony away from the jury." *Id.* at 643. To warrant overturning the jury's verdict, directly contradictory testimony must be impeached to the extent that it is deprived of probative value or the jury could not reasonably believe it, or it must defy physical reality or indisputable physical facts. *Id*. at 643-644.

Our review of the record testimony reveals that the testimony was believable and any conflict was minor. Residents living at the house all testified that defendant sold cocaine out of the house and that defendant cut up the cocaine on a green plate in the room of one resident. Police confiscated that same green plate from this room. None of their testimonies were impeached to the extent that they lacked all probative value. Nor did any of their testimonies defy physical realities. While it is possible to imagine that all the residents were lying, the issue of their credibility is better left to the jury. *Id.* at 642.

Defendant next argues that defense counsel's performance was deficient. We review the court's findings of fact at the *Ginther* hearing for clear error and all related constitutional questions de novo, *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In order to establish a claim of ineffective assistance, the defendant has the burden of showing that "(1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Defendant contends that counsel rendered ineffective assistance for several reasons related to the court's alternative arraignment procedure. First, defendant argues that counsel acted in an objectively unreasonable manner when he allegedly failed to inform defendant of the information. At the *Ginther* hearing, defense counsel testified that he gave defendant a copy of the information approximately one month before trial. Defendant testified that he did not receive a copy of the information, although he admitted to receiving other records from counsel on that same day. At the close of the hearing, the court found counsel's testimony more credible and found that counsel had presented defendant with a copy of the information. After a review of the record, we do not think that the court made a mistake in coming to this conclusion. We will not displace the trier of fact's judgment as to the witnesses' credibility. *Lemmon*, *supra* at 642.

Second, defendant contends that counsel was ineffective because counsel neither objected to the court's failure to confirm defendant's receipt of the information, nor did he object to the alternative arraignment procedure as unconstitutional. The parties did not address counsel's failure to object during the *Ginther* hearing. Thus, we are left to speculate as to why counsel did not object on either ground. However, even assuming that counsel had acted below an objective standard of reasonableness, there is no reason to assume that the objection would have changed the outcome of the trial. Counsel testified at the *Ginther* hearing that there was no plea bargain offer from the prosecution and that defendant had continuously maintained his innocence. According to counsel, the intended plan was to take the case to trial. At most, had counsel objected, the effect would have been preservation of a constitutional issue and compliance with the arraignment procedure. "Errors which cannot possibly create any prejudice to the rights of one charged with crime ought not to, and cannot, operate as a ground for a new trial." *People v Wade*, 101 Mich 89, 91; 59 NW 438 (1894).

Defendant's last argument on appeal is that the evidence was insufficient to support his convictions. We disagree. To support a conviction for possession with intent to deliver less than fifty grams of cocaine, the prosecution must prove the following four elements beyond a reasonable doubt: "(1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver." *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992).

Defendant believes that the evidence was insufficient to support a finding that he possessed the confiscated cocaine. To show that defendant possessed the cocaine, the prosecution must show that defendant "exercised dominion or control over the substance." *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003). Possession can be actual or constructive, as well as joint or exclusive. *Id.* A defendant's mere presence where drugs are located is not enough to establish constructive possession. *Wolfe*, *supra* at 520. Rather, some additional connection between defendant and the substance must be shown to establish that defendant possessed the drug. *Id.*

In this case, evidence showed that defendant was working with others to sell cocaine and that defendant, on the day of the incident, had purchased cocaine and returned to the house. Four of the home's residents all testified that defendant used one of their rooms as a place to cut up cocaine on a green plate. When police raided the house, they found cocaine on a green plate in that room. Testimony also indicated that defendant admitted his two cell phones were found in the room. Shortly before the raid, defendant, according to testimony, had directed two of these witnesses (including the one whose room was used to cut the drug) to sell $75 worth of cocaine. In our view, these facts are sufficient to conclude that defendant possessed the cocaine.

Defendant also alleges that the testimonies of each of the witnesses lacked credibility because of their drug addictions, long criminal histories, and the charges pending against them in the instant matter. However, it is for the trier of fact, and not this Court, to weigh the credibility of a witness's testimony at trial. *McKinney*, *supra* at 165. In this case, the jury found the witnesses' testimonies credible. We will not second-guess that determination on appeal.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra